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POINTS RELIED ON

I. THE TRIAL COURT DID NOT ERR IN FAILING TO RECUSE ITSELF WHEN FATHER FILED HIS APPLICATION FOR CHANGE OF JUDGE PURSUANT TO MISSOURI SUPREME COURT RULE 126.01(b) BECAUSE THE TERMINATION OF PARENTAL RIGHTS PROCEEDING IS A SUPPLEMENTAL PROCEEDING PURSUANT TO SUPREME COURT RULE 126.01(c), THE TRIAL JUDGE HAD BEEN FOLLOWING THE FAMILY FOR A PERIOD OF AT LEAST TWO (2) YEARS AND APPELLANT WAS NOT ENTITLED TO A CHANGE OF JUDGE BASED ON THE PHILOSOPHY OF THE FAMILY COURT WHICH IS ONE JUDGE, ONE FAMILY.

II. THE TRIAL COURT DID NOT ERR IN TERMINATING FATHER'S PARENTAL RIGHTS BECAUSE THERE WAS SUFFICIENT EVIDENCE PRESENTED BY CHILDREN'S DIVISION REGARDING THE STATUTORY TERMINATION GROUNDS IN THAT THESE GROUNDS WERE PROVEN BY CLEAR, COGENT AND CONVINCING EVIDENCE, THE CHILDREN'S DIVISION PRESENTED SUFFICIENT EVIDENCE

AND MUST ONLY PROVE ONE STATUTORY GROUND IN ORDER TO TERMINATE.

III. THE TRIAL COURT DID NOT ERR IN TERMINATING FATHER'S PARENTAL RIGHTS IN THAT THERE WAS SUFFICIENT EVIDENCE PRESENTED THAT TERMINATION WAS IN THE CHILD'S BEST INTEREST.

IV. THE TRIAL COURT DID NOT ERR IN ADMITTING INTO EVIDENCE THE EXPERT WITNESS REPORTS OF DR. LISA EMMENEGGER AND DR. JOSEPH DAUS IN LIEU OF THEIR TESTIMONY IN THAT BOTH REPORTS WERE PART OF THE COURT FILE WHICH THE COURT TOOK JUDICIAL NOTICE OF AND DR. JOSEPH DAUS TESTIFIED IN THE ADJUDICATION TRIAL AGAINST APPELLANT, AT WHICH TIME APPELLANT HAD THE OPPORTUNITY TO CROSS-EXAMINE HIM.

V. THE TRIAL COURT DID NOT ERR IN ALLOWING THE CHILDREN'S DIVISION TO QUESTION APPELLANT'S EXPERT WITNESSES WITH HYPOTHETICAL QUESTIONS

**BECAUSE THE FACTS IN THE HYPOTHETICAL QUESTIONS
WERE IN EVIDENCE AND SAID QUESTIONS WERE A PROPER
METHOD TO IMPEACH APPELLANT'S EXPERT WITNESSES.**

ARGUMENT

I

THE TRIAL COURT DID NOT ERR IN FAILING TO RECUSE ITSELF WHEN FATHER FILED HIS APPLICATION FOR CHANGE OF JUDGE PURSUANT TO MISSOURI SUPREME COURT RULE 126.01(b) BECAUSE THE TERMINATION OF PARENTAL RIGHTS PROCEEDING IS A SUPPLEMENTAL PROCEEDING PURSUANT TO SUPREME COURT RULE 126.01(c), THE TRIAL JUDGE HAD BEEN FOLLOWING THE FAMILY FOR A PERIOD OF AT LEAST TWO (2) YEARS AND APPELLANT WAS NOT ENTITLED TO A CHANGE OF JUDGE BASED ON THE PHILOSOPHY OF THE FAMILY COURT, WHICH IS ONE JUDGE, ONE FAMILY.

The Supreme Court of Missouri has embraced the philosophy of the family court. Indeed, there is a chapter in the statutes which sets out the establishment of, and workings of, both the court's and the legislature's acceptance of this policy. Chapter 487, RSMo., 1995. One of the cornerstones of this idea of family courts is that there will be one judge for one family. The courts and legislature believed that if one judge handled all of the domestic issues of one family, then there would be better continuity of

services and the judge would know the family and be familiar with its strengths, weaknesses and needs. One judge would come to know the family and would make decisions in that family's best interest.

No case points out the wisdom of this philosophy better than the present case. In this particular case, the judge became involved with the family when a petition was filed by Respondent Juvenile Officer alleging that S.H. came under the provisions of 211.031, RSMo. This occurred in April of 2002. Trial of the care and protection case began on June 10, 2002 and concluded on June 12, 2002. On June 12, the judge sustained the petition filed by the Juvenile Officer, found that the best interests of the child required that she remain in the custody of the Division of Family Services, but that Appellant father was an appropriate placement. (T 02, 138-139). There was a review hearing held on October 8, 2002, at which Judge Frawley presided. (L.F., Vol. I, 117). There was a permanency hearing on February 13, 2003, at which time the court found that father was not an appropriate placement but that the permanent plan for the child was reunification with either mother or father (L.F., Vol. I, 154-155). Other review hearings were held and, at one point, the Division of Family Services was recommending reunification and termination of jurisdiction. (L.F., Vol. II, 198). However, the plan changed and, as of August 2003, the plan was

termination of parental rights as to both parents and adoption (L.F., Vol. II, 227). A petition for termination of parental rights was filed, pursuant to court order, on September 8, 2003 (L.F., Vol. II, 234). Appellant father then filed a motion to return physical and legal custody of the child to father (L.F., Vol. II, 242). That motion was heard on September 22, 2003, and the motion was denied on October 8, 2003 (L.F., Vol. II, 272).

The important thing to note about all of these hearings is that the same judge, the trial judge, heard all of the different proceedings. The judge was able to know the family and determine what actions and services were in the best interest of the child. That is exactly the kind of situation the family court was set up to address.

The Juvenile Officer submits that the termination of parental rights, ordered by the trial court, is not a separate and distinct proceeding for purposes of Rule 126.01(c). That rule states that "...a supplemental petition and a motion to modify a prior order of disposition under chapter 211, RSMo., shall not be deemed to be an independent civil action unless the judicial officer designated to hear the motion is not the same judicial officer that heard the previous action". The termination of parental rights action is not an independent civil action for several reasons. First, the trial court orders that the Juvenile Officer file the termination of parental rights

proceeding, and that order usually comes during the review hearing of the care and protection case. Second, the judgment from the care and protection case forms the basis of the termination of parental rights case, particularly in a failure to rectify case. Third, the reunification plan put in place by Division of Family Services for the parent to complete is part of the dispositional order in the care and protection case. The court which is hearing the termination of parental rights case must look to the underlying care and protection case for the reunification plan and for the underlying cause of action. The two actions cannot be separated; in the majority of cases, one action grows out of the other.

Appellant relies on Rule 126.01(b) and on State ex. rel. Brault v. Keyser, 562 S.W.2d 172 (Mo. App. 1978) to bolster his argument that a change of judge should be granted. However, State ex. rel. Brault v. Keyser was written prior to the enactment of Rule 126-01(c). Brault should not be followed as it no longer accurately reflects the state of family law in Missouri. Brault was also written prior to the creation of the family court.

It is important to note that care and protection cases, delinquency cases and termination of parental rights cases are all lumped together in Chapter 211, RSMo. All of these types of cases fall under the provisions of the juvenile code. They are all controlled by the same set of rules. Since the

enactment of Rule 126.01, termination of parental rights proceedings must conform to those rules.

Another thing that sets this case apart from others is where the case was procedurally when the termination of parental rights was ordered and when the change of judge was requested. Appellant relies on State ex. rel. Stubblefield v. Bader, 66 S.W.3d 741 (Mo. banc 2002) and State ex. rel. L.B. v. Frawley, 136 S.W. 3d 534 (Mo. App. E.D. 2004). These cases are not consistent factually with the case at bar. In both of those cases, the request for a change of judge came at the point of a protective custody hearing at which time the court was just getting involved with the family. The court did not have a long history with the families, as it does in the instant case. Additionally, in the Stubblefield case, the court stated that there had not been a “trial” on the merits and, therefore, the request for a change of judge was timely. Stubblefield at 536. This factual situation is completely different than the case at bar and it is not a distinction without a difference. In this case, there had been several hearings on the merits. The judge had already made decisions which were not challenged by Appellant. Appellant never took an appeal from the Order and Judgment that initially brought the child into care and which granted legal custody of the child to the Division of Family Services. Appellant father was perfectly happy with the rulings

made by Judge Frawley so long as those rulings were in father's favor. Once the judge ordered termination of parental rights, father decided he no longer liked the way the judge was ruling and decided to request a change of judge. This, in effect, gives father two bites at the apple, and that is not the intent of Rule 126.01. The Juvenile Officer realizes that father's intent is not relevant under 126.01(b), but contends it is very relevant under 126.01(c).

The Appellant actually had recourse if he believed that his motion for change of judge was improperly denied. His remedy was a Writ of Prohibition. The purpose of the Writ of Prohibition is to correct or prevent judicial proceedings that lack jurisdiction. State ex. rel. Pulliam v. Commissioner, 108 S.W.2d 148, 154 (Mo. App. W.D. 2003). Father's position at that time was that the judge had improperly denied his request for a change of judge. Instead of seeking a writ, Appellant decided he would see what the judge would do and, if he didn't like the outcome, he could appeal and get another judge to hear the case, hopefully with a different result. There are good reasons for limiting a change of judge following numerous hearings and reviews and following a dispositional order. The family court philosophy should be followed.

ARGUMENT

II

THE TRIAL COURT DID NOT ERR IN TERMINATING FATHER'S PARENTAL RIGHTS BECAUSE THERE WAS SUFFICIENT EVIDENCE PRESENTED BY DIVISION OF FAMILY SERVICES REGARDING THE STATUTORY TERMINATION GROUNDS IN THAT THESE GROUNDS WERE PROVEN BY CLEAR, COGENT AND CONVINCING EVIDENCE, THE DIVISION OF FAMILY SERVICES PRESENTED SUFFICIENT EVIDENCE AND MUST ONLY PROVE ONE STATUTORY GROUND IN ORDER TO TERMINATE.

Respondent Juvenile Officer submits to this court that there was clear, cogent and convincing evidence presented which supports the trial court's judgment of termination of parental rights. If one examines the evidence adduced at trial, it is clear that the trial court's judgment should be affirmed.

The standard for review of a termination of parental rights case is that the judgment of the trial court should be affirmed unless there is no substantial evidence to support it, unless it is against the weight of the evidence, or unless the trial court erroneously declared or applied the law.

In the Interest of M.E.W., 729 S.W.2d 194, 195-196 (Mo. banc 1987); In the interest of J.M., 815 S.W.2d 97, 101 (Mo. App. 1991); In the Interest of A.S., 38 S.W.3d 478, 481 (Mo. App. 2001). The appellate court is to review the facts in the light most favorable to the trial court's ruling. M.E.W. at 196. Further, the appellate court should defer to the trial court's ability to determine the witnesses' credibility and to choose between conflicting evidence. M.E.W. at 195-196. The trial court is in a superior position to judge the credibility of witnesses and is free to believe all, part or none of the witnesses' testimony. In the Interest of J.L.M., 64 S.W.3d 923, 924 (Mo. App. 2002).

It is necessary for the Petitioner in a termination of parental rights case to prove only one statutory ground for termination to occur. This court has held that one statutory ground for termination is sufficient to terminate parental rights. In the Interest of E.L.B., 103 S.W.3d 774, 776 (Mo. banc 2003); In re C.W., 64 S.W.3d 321, 324 (Mo. App. 2001). Termination must also be shown to be in the child's best interest. E.L.B. at 776. In E.L.B., the court found there was sufficient evidence to support termination on one of the grounds in Section 211.447, so it did not address Appellant's other allegations of error.

In this case, Appellant wrongly states that the court terminated his parental rights on three grounds when, in fact, the court terminated his parental rights on five grounds. The first ground raised by Appellant, that the child was in care for at least fifteen of the most recent twenty-two months prior to the filing of the petition for termination of parental rights will not be addressed, as it was recently determined not to be a ground by this court. *In the Interest of M.D.R.*, 124 S.W.3d 469 (Mo. 2004).

The other four grounds are as follows:

- 1) Abuse and neglect in that Appellant repeatedly and continuously failed, though physically or financially able, to provide the child with the care and control necessary for the child's physical, mental or emotional health and development, pursuant to Section 211.447.4(2)(d);
- 2) Abuse and neglect in that Appellant has a mental condition that is either permanent or such that there is no reasonable likelihood it can be reversed, which renders Appellant unable to provide the child the necessary care, custody and control, pursuant to Section 211.447.4(2)(a);
- 3) Appellant failed to rectify the conditions that brought the child into care or conditions of a harmful nature continue to exist, pursuant to Section 211.447.4(3); and

4) Appellant was unfit to be a party to the parent-child relationship, pursuant to Section 211.447.4(6).

All four grounds were supported by the evidence. Thus, the trial court's Findings, Conclusions and Judgment Terminating Parental Rights ("Termination Judgment") should be affirmed.

The trial court found that a ground for termination of parental rights existed because of abuse or neglect of the child pursuant to Section 211.447.4(2) of the Revised Statutes of Missouri. The statute then requires that the court consider and make findings on the following four factors:

1) A mental condition that is shown by competent evidence to be permanent or with no reasonable likelihood of reversal which renders the parent unable to provide for the child;

2) Chemical dependency which prevents the parent from providing the necessary care for the child and which cannot be treated to enable the parent to provide the child with the necessary care;

3) Severe act or recurrent acts of physical, emotional or sexual abuse of the child by the parent or by another where the parent knew or should have known of the abuse; and

4) Repeated or continuous failure by the parent, although physically or financially able, to provide the child with the care and control

necessary for the child's health and development. Section 211.447.4(2)(a-d), RSMo.

In this case, the court found proof of two factors which supported the termination of Appellant's parental rights: (1) the trial court found Appellant had a mental illness that was either permanent or such that there was no reasonable likelihood it can be reversed which rendered the Appellant unable to provide the child the necessary care, custody and control; (2) the court found Appellant repeatedly and continuously failed to contribute to the care and control necessary for the child's development, although physically or financially able. (L.F. 341, 343).

The court considered the other two factors and found no evidence was presented regarding those factors, Appellant's chemical dependency or a severe act or recurrent acts of abuse. Thus, these factors were considered irrelevant and not applicable by the court (L.F. 358).

As stated above, pursuant to Section 211.447.4(2), a child is considered abused or neglected when the parent has repeatedly and continuously failed to provide the child with the care and control necessary for her health and development. Section 211.447.4(2)(d), RSMo. Again, Appellant makes only a general statement, arguing that the trial court did not have enough evidence to establish the factors in Section 211.447.4(2).

Dr. Joseph Daus did a psychological evaluation of Appellant in May of 2002 (L.F. 274-281). While Appellant was felt to have adequate intellectual functioning and was felt not to have any psychopathology, Dr. Daus had serious concerns regarding Appellant's ability to provide long term, adequate care for his daughter (L.F. 280). "Appellant displayed obvious confusion between the roles of parental guardian and sexual partner" (L.F. 280). He also displayed personality tendencies that would make him, "...significantly more likely...to engage in future inappropriate relationships and/or sexual deviancies" (L.F. 280, 281).

Dr. Lisa Emmenegger conducted a psychological evaluation of Appellant during four visits from July to September 2002 (L.F. 282). Dr. Emmenegger found Appellant, "...tends toward a concrete thinking style, has impairments in his self-insight, is notable immature, and his judgment, in general, would be described as marginal" (L.F. 286). Dr. Emmenegger went on to state that Appellant has strikingly impaired judgment (L.F. 286). His ability to protect his daughter and to make appropriate judgments regarding her well-being are questionable (L.F. 286). All of these issues go directly to Appellant's ability to provide and care for his daughter and support the trial court's determination that Appellant's parental rights to his daughter should be terminated.

Appellant argues that the trial court did not find that father had been abusive and/or neglected his child. That argument is just simply wrong. On June 12, 2002, the trial court entered Findings and Judgment of Jurisdiction, said judgment delineating the ways in which Appellant had neglected his child (L.F. 84-89). Further, on June 11, 2002, in its Order and Judgment of Disposition, the trial court ordered that legal custody of the child be granted to the Division of Family Services for appropriate placement, and that Appellant was an appropriate placement (L.F. 93). The very fact that the trial court adjudicated the child as to Appellant shows that he neglected the child in some way.

Michelle Dean, the child's foster mother, testified at the termination of parental rights hearing on January 9, 2004. During her testimony, Mrs. Dean stated that she and Appellant would have no conversations regarding the child when Appellant picked the child up for visits (T. 1-9, 181). Additionally, Appellant never brought any supplies for the child (T. 1-9, 182). Mrs. Dean further testified that since October of 2003 she had received \$500 for support of the child (T., 1-9, 186). The child's day care, food and supplies, "...it's at least \$800 a month..." (T. 1-9, 187). She further testified that she pays for doctor visits and medications (T. 1-9, 187).

Shonetta Reed, the Division of Family Services case manager, testified that Appellant had recently purchased a home, had an income, and had not paid any support for the child (T. 1-9, 125-127). All of this evidence goes to the fact that Appellant repeatedly and continuously failed to provide the child with the care and control necessary for her health and development.

In any event, even if there was conflicting evidence, appellate courts should review the facts in the light most favorable to the trial court's ruling.

As shown through the testimony and reports of Dr. Daus and Dr. Emmenegger, there was sufficient evidence to support the finding that Appellant had a mental condition (L.F. 274-287) (T. 6-10, 44-63). Respondent Juvenile Officer will not restate all of the evidence here that has already been discussed. It is important to note that Dr. Daus expressed concern over the fact that, at the time the child was conceived, Appellant was around 35 years old and the biological mother was about 16 years old. (T. 6-10, 49). Dr. Daus also testified that Appellant showed tendencies towards narcissistic type personality (T. 6-10, 48), indications of obsessive-compulsive behavior (T. 6-10, 53 and ephebophilia (T. 6-10, 53), and stated that he would have serious concerns about his relationship with any young girl (T. 6-10, 54).

It is also worth noting that in the Judgment of Termination of Parental Rights, the court relied on the statements of Dr. Daus and Dr. Emmenegger and did not rely on the statements of Appellant's psychologist, counselor or psychiatrist (L.F. 341-343).

There was sufficient evidence presented to show that the child had been in care for over one year and the conditions bringing the child into care continued to exist, and the trial court made that finding (L.F. 344).

Appellant, in June of 2002, was ordered to obtain and maintain regular employment, obtain and maintain adequate housing and enroll in and successfully complete individual counseling, family violence education and counseling for ephebophilia (L.F. 100). After the child came into care, father sold his home (T. 9-22, 32,33), removed the child from her placement and took her to her mother's apartment (T. 922, 37), in direct violation of the court's order (L.F. 140) and never intended to parent his daughter)T. 922, 53, 54, 69, 88, 89). Additionally, Appellant made threats to the Deans that the would take the child from their home if they were not nice to him, a move which would have put the child at risk)T. 9-22, 96, 106). So, it is obvious that conditions of a potentially harmful nature continued to exist. Appellant's second point should be denied.

ARGUMENT

III

THE TRIAL COURT DID NOT ERR IN TERMINATING FATHER'S PARENTAL RIGHTS IN THAT THERE WAS SUFFICIENT EVIDENCE PRESENTED THAT TERMINATION WAS IN THE CHILD'S BEST INTEREST.

Once the trial court finds proof for a statutory ground for termination, it then must determine the best interest of the child. *In the Interest of E.L.B.*, 103 S.W.3d 774 (Mo. banc 2003). Best interest is not evaluated on appeal by the clear, cogent and convincing standard, but rather will only be disturbed on appeal if the trial court has abused its discretion. *In the Interest of A.M.W.*, 64 S.W.3d 899, 906-907 (Mo. App. 2002). The court did not abuse its discretion in this case.

The trial court, in this case, had been working with Appellant for almost two years and had a mountain of evidence amassed over that time. The evidence all supported termination as being in the best interest of the child.

In the instant case, best interest of the child is shown by several different factors, not the least of which is Appellant's numerous statements that he wanted Michelle Dean to raise the child (T. 9-22. 88, 89, 97), that

Appellant had always intended for the Deans to have the child (T. 9-22, 88, 89, 95-97, 109), and that the Deans were the primary caretakers for the child (T. 9-22, 99).

The trial court found, in accordance with the statute and case law, that both inquiries (i.e. grounds and best interest) were resolved in the affirmative. Section 211.447, RSMo.; *In the Interest of J.L.M.*, 64 S.W.3d 924 (Mo. App. S.D. 2002). Therefore, termination of Appellant's parental rights was proper. Appellant's third point should be denied.

ARGUMENT

IV

THE TRIAL COURT DID NOT ERR IN ADMITTING INTO EVIDENCE THE EXPERT WITNESS REPORTS OF DR. LISA EMMENEGGER AND DR. JOSEPH DAUS IN LIEU OF THEIR TESTIMONY AND OVER FATHER'S HEARSAY OBJECTION, BECAUSE THESE REPORTS WERE PART OF THE UNDERLYING FILE IN THE CARE AND PROTECTION PROCEEDING, OF WHICH THE COURT TOOK JUDICIAL NOTICE, AND THE TERMINATION OF PARENTAL PROCEEDING IS NOT AN INDEPENDENT CAUSE OF ACTION.

The Juvenile Officer has argued, under Point I herein, that a termination of parental rights proceeding is not a separate a distinct proceeding when the trial court, under the family court philosophy, has already held several trials and issued a dispositional order. Therefore, the reports of Dr. Emmenegger and Dr. Daus would be part of the record in the termination of parental rights action, as both were entered in the record during one of the hearings and the trial court, in the termination of parental rights proceeding, took judicial notice of the underlying care and protection file.

It should be noted that father was present and represented by counsel at the care and protection hearing. He had ample opportunity at that time to cross-examine witnesses, including Dr. Daus. Even if the reports were improperly admitted, however, there was still evidence present to terminate on other grounds.

Missouri courts have uniformly held that the erroneous admission of evidence does not prejudice the trier of fact because the trial judges have the ability to consider that evidence which is relevant and admissible. *In the Interest of T.B.*, 963 S.W.2d 252 (Mo. App. W.D. 1997); *In the Interest of S.T.W.*, 39 S.W.3d 517 (Mo. App. S.D. 2000). In *S.T.W.* the court went so

far as to state that, "...it is nearly impossible in a court-tried case to predicate reversal on the erroneous admission of evidence." S.T.W. at 518. S.T.W. went on to say that "On review we take judicial notice of prior proceedings in Juvenile court..." S.T.W. at 519. The prior proceedings in Juvenile court in the present case were the jurisdictional hearing, the dispositional hearing, review hearings and the motion to return custody filed by father. Surely the trial court is able to take judicial notice of those findings and consider evidence adduced during those hearings at the termination of parental rights hearing. The termination of parental rights proceeding is supplemental to the other proceedings, and the reports were properly admitted.

Dr. Daus was cross-examined by Appellant at the adjudicatory hearing. Dr. Emmenegger's report was admitted into evidence at Appellant's motion to return physical and legal custody of the child to faather (T. 9-22, 125). The trial court properly relied on these reports in its termination of parental rights judgment.

ARGUMENT

V

THE TRIAL COURT DID NOT ERR IN ALLOWING THE DIVISION OF FAMILY SERVICES TO QUESTION APPELLANT'S EXPERT WITNESSES WITH HYPOTHETICAL QUESTIONS ABOUT FACTS THAT WERE NOT IN EVIDENCE BECAUSE THE FACTS IN THE HYPOTHETICAL QUESTIONS WERE IN EVIDENCE AND SAID QUESTIONS WERE A PROPER METHOD TO IMPEACH APPELLANT'S EXPERT WITNESSES.

Appellant produced three expert witnesses at trial, Dr. Roger Gennari, Dr. Jo-Ellen Ryall and Stephen Franklin. Each of these witnesses were called upon to give an opinion as to Appellant's mental condition. It is well within the confines of trial practice and procedure that hypothetical questions probing the quality of an expert's opinions are allowed. The questions asked by the Division of Family Services, the Juvenile Officer and the Guardian ad Litem were proper.

One of the difficulties with the termination of parental rights trial was that witnesses were taken out of order. In order to accommodate the professionals who were appearing, Appellant put his experts on before the Division of Family Services put on its case. However, the reports of Dr.

Daus and Dr. Emmenegger were already in evidence and some of the hypothetical questions used to impeach Appellant's witnesses came from those reports. (T. 12-12, 8, 9).

Stephen Franklin testified that Appellant "...appeared to be doing well..." and appears quite willing and capable of providing proper care for his daughter (T. 12-12, 46, 49). On cross-examination, the Division of Family Services challenged Mr. Franklin with regard to who he communicated with, or what documents he reviewed, that led to his conclusions (T. 12-12, 50-54). There were also hypothetical questions regarding testimony that would be presented in the Division's case in chief (T. 12-12, 52-55). For example, the attorney for the Division asked Mr. Franklin if events the Appellant's father would testify to would change his conclusions. For instance, the questions was asked that if Appellant's parents also testified that he had a conversation in which Appellant had stated that he was going to take a gun and kill the child's mother, her family and himself, would that change the conclusion (T. 12-12, 54). Mr. Franklin replied that he would need to create a new conclusion and that he could not stand by his conclusion at this point (T. 12-12 54, 55).

The attorney for the Guardian ad Litem asked Mr. Franklin if he had been given a copy of Dr. Daus' report to review. Mr. Franklin replied that

he had not (T. 12-12, 62). He also testified that he would question his conclusions if Appellant was not honest with him (T. 12-12, 66). All of the hypotheticals that were asked of Mr. Franklin dealt with the psychological reports from Dr. Daus and Dr. Emmenegger, and the testimony of Dr. Gennari, all of which was evidence before the trial court. Appellant's fifth point should be denied.

CONCLUSION

The Division of Family Services was successful in prosecuting the termination of parental rights action, and the judgment of the trial court should be affirmed. Father was not timely in filing his request for a change of judge because the termination of parental rights proceedings are supplementary to the care and protection case. Additionally, the family court philosophy, which this court has embraced, requires one judge for one family and that philosophy was followed herein. There was sufficient evidence to support the findings of the trial court.

Respectfully Submitted,

Margaret E. Gangle #31464
Attorney for Respondent
Juvenile Officer

CERTIFICATES OF SERVICE AND COMPLIANCE

I hereby certify that two copies and one computer diskette of the foregoing Substituted Brief of Respondent Juvenile Officer were mailed, by postage prepaid U.S. Mail, this 17th day of December, 2004, to:

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I hereby certify that this brief contains the information required by Rule 55.03, complies with the limitations contained in Rule 84.06(b), and contains 4980 words, was typed in Word, and that the diskettes provided this Court and counsel have been scanned for viruses and are virus free.

Margaret E. Gangle
Attorney for Juvenile Officer

IN THE MISSOURI SUPREME COURT

In the Interest of:)
) **Appeal No. SC86440**
S.M.H., a minor child)

**APPEAL FROM THE TWENTY-SECOND JUDICIAL CIRCUIT
SAINT LOUIS CITY
THE HONORABLE THOMAS J. FRAWLEY, PRESIDING**

APPENDIX OF RESPONDENT JUVENILE OFFICER

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